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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,917	01/16/2001	Mohamed M. Haq	650016-2	4854

58773 7590 03/21/2007
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EXAMINER

NAJARIAN, LENA

ART UNIT	PAPER NUMBER
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3626

MAIL DATE	DELIVERY MODE
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03/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/760,917

Applicant(s)

HAQ, MOHAMED M.

Examiner

Lena Najarian

Art Unit

3626

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 1, 2, 4-15, 23, 30-34 and 36-38.
Claim(s) withdrawn from consideration: NONE.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).
13. ☐ Other: _____.


JOHN W. HAYES
SUPERVISORY PATENT EXAMINER

Continuation of 11.

Applicant's arguments filed 3/12/07 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 3/12/07.

(1) Applicant argues that the process described by Mcllroy does not give the medical practitioner access to the diagnosis criteria. Rather, the Mcllroy system outputs guideline treatment options.

As per the first argument, the Examiner respectfully submits that Mcllroy discloses at col. 2, lines 59-65 a database of diagnosis-based guidelines that can be used during various steps of the clinical decision process. As such, it is readily apparent that Mcllroy discloses diagnosis criteria.

(2) Applicant argues that Leet describes a system that outputs cause and treatment of disease conditions. The Leet system output is not a suggested diagnosis. Rather, the Leet system uses a diagnosis code as input, not as output. The Mcllroy output is not a suggested diagnosis. Treatment options are not a suggested diagnosis.

As per the second argument, the Examiner respectfully submits that Leet was not relied on for the features recited in claim 2. Rather, the Examiner relied on the combination of Leet and Mcllroy. In response to Applicant's argument that Mcllroy does not output a suggested diagnosis, the Examiner disagrees as col. 2, lines 43-48 of Mcllroy teaches providing diagnosis and Fig. 9b of Mcllroy shows that the system cannot output a treatment option unless a diagnosis has been determined. As such, if the system is outputting a treatment option, a diagnosis is also presented.

(3) Applicant argues that treatments ranked based on national and geographic area demographics are not individualized.

As per the third argument, according to the Applicant's specification (paragraph [0098] of patent application publication), "the treatment individualization recommendation may include recommendations for the best treatment to fit an individual patient profile. Such recommendations may include individualized therapy based on age, gender, ethnic background, coexistent illness, pregnancy, drug levels, etc." As such, the Examiner's broadest reasonable interpretation of "treatment individualization recommendation" would include using the demographic characteristics (i.e. age) disclosed by Leet (col. 12, lines 50-64 of Leet).

(4) Applicant argues that the sections of Leet cited by the Examiner describe that the diagnosis code may be the ICD code, not that such ICD code may be determined by using, or processing, a subset of the new patient data.

As per the fourth argument, the Examiner respectfully submits that col. 7, lines 58-60 of Leet teaches the coding of diagnostic and procedural information into ICD code numbers. As such, it is readily apparent that Leet discloses that the ICD code is determined.

(5) Applicant argues that the phrase "Regular Diet" gives no indication of the foods the patient typically eats.

As per the fifth argument, the Examiner respectfully submits that claim 9 was rejected based on the combination of Leet, Mcllroy, and Portwood. Leet teaches dietary counseling in Table VIII. Portwood teaches drug-food interaction tests (col. 6, lines 63-67 of Portwood). As such, it is readily apparent that there is an indication of foods the patient typically eats.